

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL A. LA PORTA, as Guardian)
of the estate and person of)
Michael D. LaPorta, a disabled)
person,)
Plaintiff,)
v.) No. 14 CV 09665
CITY OF CHICAGO, a municipal)
corporation, et al.,) Chicago, Illinois
Defendants.) October 2, 2017
10:00 a.m.

VOLUME 1
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HARRY D. LEINENWEBER

APPEARANCES:

For the Plaintiff: ROMANUCCI & BLANDIN, LLC
BY: MR. ANTONIO M. ROMANUCCI
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1 happened on the night in question does not mean that "no one
2 could reasonably believe the witness could have observed,
3 remembered, communicated, or told the truth" as is necessary
4 to justify exclusion under Rule 601. See *U.S. versus Gutman*.

5 Competency of a witness to testify as distinguished
6 from the issue of credibility is a limited threshold decision
7 as to whether a proffered witness is capable of testifying in
8 any meaningful fashion whatsoever. See *U.S. versus Banks*.
9 LaPorta can provide meaningful testimony about what happened
10 on the night in question as he did at depositions and about
11 other relevant issues.

12 Motion to admit Kelly's deposition and bar reference
13 to his Fifth Amendment invocation. That's granted in part
14 because plaintiff has -- had every motivation and opportunity
15 to cross-examine Officer Kelly at his 2012 deposition. The
16 City may offer into evidence his original deposition testimony
17 if indeed he elects to invoke his Fifth Amendment rights when
18 called to the stand. See Rule 804(b)(1). Plaintiff may
19 adduce evidence that Kelly invoked the privilege at his 2016
20 deposition and may impeach Kelly accordingly.

21 In a civil case, an adverse inference may be drawn
22 against a witness who pleads the Fifth Amendment even if that
23 witness is not a party. See *Daniels versus Pipefitters Local*
24 *597*. The evidence will not be excluded on grounds of unfair
25 prejudice because it is extraordinarily relevant testimony

Opening Statement - Plaintiff

1 we have it?

2 MS. ROSEN: Is that the document production, too?
3 It's my understanding there were documents produced and you
4 were provided documents. I'm just asking.

5 THE COURT: We don't need to do that now, but satisfy
6 yourself that you've got everything you should have gotten.

7 MR. ROMANUCCI: Sure. We'll take care of it.

8 THE COURT: Pardon?

9 MR. ROMANUCCI: We'll take care of it.

10 THE COURT: All right. We'll see you at 10:00 o'clock
11 tomorrow --

12 MR. ROMANUCCI: Thank you, your Honor.

13 THE COURT: -- for the City's opening. Thank you.

14 (Adjourned at 4:08 p.m.)

15 * * * * *

16 C E R T I F I C A T E

17 I certify that the foregoing is a correct transcript of the
18 record of proceedings in the above-entitled matter.

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20 /s/ LISA H. BREITER
21 LISA H. BREITER, CSR, RMR, CRR
Official Court Reporter

November 3, 2017

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